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STATUTORY INSTRUMENTS

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**1993 No. 323**

**The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993**

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 and shall come into force on 1st May 1993.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Town and Country Planning (Scotland) Act 1972;

“the 1986 Act” means the Housing and Planning Act 1986;

“buried or mounded vessel” includes a vessel which is only partially buried or mounded;

“controlled quantity” shall be construed in accordance with regulation 3(3);

“established quantity” has the same meaning as in section 38(10) of the 1986 Act;

“established period” has the same meaning as in section 38(10) of the 1986 Act;

“moveable container” means any container designed or adapted to contain hazardous substances other than a vessel;

“neighbouring land” means—

(a) where storage or use of hazardous substances is to take place within a building (hereinafter referred to as “the storage building”),

(i) every other separately owned or occupied unit within the storage building, and

(ii) land which is conterminous with or within 4 metres of the boundary of land for which hazardous substances consent is applied, but only if any part of the first mentioned land is within 90 metres of storage building;

and

(b) where storage or use of hazardous substances is to take place otherwise than within a building, land which is conterminous with or within 4 metres of the boundary of land for which hazardous substances consent is applied, but only if any part of the first mentioned land is within 90 metres of the area to be used for such storage or use;

and where any unit of a building which is divided into separate units is, in term of this definition, itself “neighbouring land”, then every other unit within that building shall also be treated as “neighbouring land” for the purposes of these regulations, irrespective of the distance

of that other unit from the storage building, the area to be used for storage or use, or the land for which hazardous substances consent is applied;

and, for the purposes of this definition, where a road falls within the distance of 4 metres measured from the boundary of the land for which hazardous substances consent is applied, the width of such road shall be disregarded in calculating that distance unless the road is more than 20 metres in width, and the term “land” shall include any building thereon.

“planning authority” shall be construed in accordance with section 172 of the Local Government (Scotland) Act 1973<sup>(1)</sup>;

“vessel” means any container designed or adapted to contain hazardous substances which is affixed to the land, and includes a container which forms part of plant or machinery which is affixed to the land, but does not include a pipeline.

(2) Any reference to a numbered regulation or Schedule is a reference to a regulation or, as the case may be, the Schedule bearing that number in these Regulations, and a reference to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph having that number in the regulation or Schedule in which the reference appears.

(3) Any reference in these Regulations—

(a) to a numbered form shall be construed as a reference to the correspondingly numbered form in Schedule 2, or a form substantially to the like effect;

(b) to a section shall be construed as a reference to that section of the Act unless there is a contrary intention.

(4) References to sections of the Act mentioned in regulations 19, 20, 21, 22 and 23 (enforcement) shall, in relation to hazardous substances control, be construed in those sections and in these Regulations as references to those sections as modified by these Regulations.

(5) Part 4 of these Regulations, Form 12 and Schedule 3 (deemed consents shall be construed in accordance with regulation 17.

(6) Schedule 1 (hazardous substances and controlled quantities) shall be construed in accordance with Part D of that Schedule.

## PART 2

### HAZARDOUS SUBSTANCES, CONTROLLED QUANTITIES AND EXEMPTIONS

#### **Hazardous substances and controlled quantities**

**3.—**(1) Subject to paragraph (2), the substances specified in column (1) of Schedule 1 are hazardous substances for the purposes of the Act.

(2) A substance which is controlled waste, as defined by section 75(4) of the Environmental Protection Act 1990<sup>(2)</sup>, or radioactive waste, as defined in section 18(4) of the Radioactive Substances Act 1960<sup>(3)</sup>, is not a hazardous substance for the purposes of the Act.

(3) The quantity specified in column (2) of Schedule 1 is the controlled quantity of the corresponding hazardous substance in column (1) of that Schedule for the purposes of the Act.

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(1) 1973 c. 65.

(2) 1990 c. 43.

(3) 1960 c. 34.

## Exemptions.

4.—(1) Hazardous substances consent is not required for the temporary presence of a hazardous substance during the period between its being unloaded from one means of transport and loaded onto another, while being transported from one place to another.

(2) Hazardous substances consent is not required for the presence of a hazardous substance contained in an aerosol dispenser if—

- (a) the capacity of the dispenser does not exceed 1000 millilitres; or
- (b) the dispenser—
  - (i) does not contain a substance or mixture of substances which is flammable within the meaning of paragraph 2 of Part III of Schedule 1 to the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984(4); and
  - (ii) does not contain a substance numbered 7, 8, 18, 21, 22, 24, 25, 27, 29, 30, 33, 34 or 65 in column 1 of Schedule 1 or, if it does, the aggregate quantity of that substance contained in aerosol dispensers with a capacity in excess of 1000 millilitres on the relevant site is less than the controlled quantity for that substance.

(3) Hazardous substances consent is not required for the presence of a hazardous substance contained in an exempt pipeline or a service pipe.

(4) Hazardous substances consent is not required for the presence of a hazardous substance which has been unloaded from a ship or other sea-going craft in an emergency until the expiry of the period of 14 days beginning with the day on which it was so unloaded; and for the purpose of this paragraph a substance shall be treated as having been unloaded from a craft in an emergency if—

- (a) it was unloaded from a craft to which a direction under section 3(1) of the Dangerous Vessels Act 1985(5) (directions by Secretary of State to harbour master) applied; or
- (b) it was unloaded from a craft after having been brought into a harbour or harbour area, within the meaning of regulation 2 of the Dangerous Substances in Harbour Areas Regulations 1987(6), without requiring notification under paragraph (1) of regulation 6 of those regulations by virtue of an exemption under paragraph (5) of that regulation.

(5) Where hazardous substances consent is deemed to have been granted under section 38 of the 1986 Act for the presence of substance number 40 in column 1 of Schedule 1, consent is not required for the presence of an additional quantity of that substance not exceeding one third of the established quantity provided that all the conditions set out in Schedule 3 and applying to that substance under the deemed consent are also complied with in relation to the additional quantity present.

(6) The presence of a substance to which paragraphs (1), (2), (3) and (4) apply shall not be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the Act or of these Regulations.

(7) In this regulation—

- (a) “exempt pipe-line” means a pipe-line used to convey a hazardous substance to or from a site, but does not include—
  - (i) that part of the pipe-line on, over, or under a site to which it has an outlet or inlet;
  - (ii) a service pipe;
- (b) “service pipe” means a pipe-line used by a public gas supplier (within the meaning of section 7(1) of the Gas Act 1986(7) to supply gas to an individual consumer from a main of that supplier.

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(4) S.I. 1984/1244 (to which there are amendments not relevant to these Regulations).

(5) 1985 c. 22.

(6) S.I. 1987/37 (to which there are amendments not relevant to these Regulations).

(7) 1986 c. 44.

## PART 3

### EXPRESS CONSENT

#### Applications for hazardous substances consent

5.—(1) Subject to paragraph (2), an application to a planning authority for hazardous substances consent shall—

- (a) be made on Form 1;
- (b) include the information specified in the form, a site map, and a substance location plan; and
- (c) be accompanied by 3 copies of the form, the map and plan submitted with it and by the notices and certificates required by regulations 6, 7 and 8.

(2) An application to the planning authority under section 56H(8) (grants of hazardous substances consent without compliance with conditions previously attached) shall—

- (a) be made on Form 2;
- (b) include the information specified in the form, a change of location plan, if required by paragraph (6), and particulars of the relevant consent; and
- (c) be accompanied by 3 copies of the form, the relevant consent, any plan submitted with the form and by the notices and certificates required by regulations 6, 7 and 8.

(3) An application to the planning authority under section 56K(9) (provisions as to effect of hazardous substances consent and change of control of land) shall—

- (a) be made on Form 2;
- (b) included the information specified in the form, a change of control plan and particulars of the relevant consent; and
- (c) be accompanied by 3 copies of the form, the relevant consent, the change of control plan and by the notices and certificates required by regulations 6, 7 and 8.

(4) The site map required by paragraph (1)(b) shall be a map reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000 which identifies the land to which the application relates and shows National Grid lines and reference numbers.

(5) The substance location plan required by paragraph (1)(b) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500 which identifies—

- (a) any area of the site intended to be used for the storage of the substance;
- (b) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be present; and
- (c) access points to and from the land.

(6) A change of location plan shall be required in the case of an application to which section 56H applies and where the condition which was previously applied restricted the location of the hazardous substance. Any such plan shall be of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application.

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(8) Section 56H of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990 (c. 43), Schedule 13, paragraph 11(8).

(9) Section 56K of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 16, Part VII.

(7) the change of control plan required by paragraph (3)(b) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies each area of the site under separate control after the proposed change of control.

(8) The “relevant consent” referred to in paragraphs (2) and (3) is the existing hazardous substances consent which applies to the hazardous substance to which the application applies; and the particulars of the relevant consent to be supplied shall be a copy of the consent, in the case of a consent granted on an application under the Act, a copy of the relevant claim, in the case of a consent deemed to be granted under section 38 of the 1986 Act or a copy of the relevant direction, in the case of a consent deemed to be granted under section 56G(10).

(9) Where an application referred to in paragraph (2) or (3) applies to more than one relevant consent, particulars of each such consent shall be included in the application.

(10) Regulations 6 to 14 shall apply to applications made under section 56K as they apply to applications for hazardous substances consent.

### **Neighbour notification**

**6.—**(1) Subject to the following paragraphs, and applicant for hazardous substances consent under regulation 5 shall notify each of those persons holding and interest in neighbouring land as specified in paragraph (2) who has not been served, in accordance with regulation 8(2) with notice of the application, by sending each of them—

- (a) a notice of the application in the form set out in Form 3—
    - (i) stating that the application, plans and maps relating to it may be inspected in the register kept by the planning authority;
    - (ii) stating the address at which the application may be inspected in accordance with regulation 9; and
    - (iii) inviting representations to be made to the planning authority during the period of 21 days beginning with the date of the notice; and
  - (b) a plan showing the situation or location of the land to which the application relates.
- (2) The persons holding a notifiable interest in neighbouring land are—
- (a) in the case of lands and heritages entered in the valuation roll at the date of the application, the persons appearing in the valuation roll in force at that time as being the owners, lessees and occupiers of those lands and heritages; and
  - (b) in the case of lands and heritages not entered in the valuation roll at the date of the application, the owners and occupiers of those lands and heritages.
- (a) (3) (a) The notification in accordance with paragraph (1) of a person holding a notifiable interest in neighbouring land in terms of paragraph (2)(a)—
- (i) in each case where the name and address of the owner, lessee or occupier can be ascertained from the valuation roll, shall be sent to such person at his address as entered in the valuation roll;
  - (ii) where information as to the owner, lessee or occupier of neighbouring land or of any premises contained or included in neighbouring land cannot be ascertained from the valuation roll, shall be sent addressed to “the Owner” at such land or premises, where the name of the owner cannot be ascertained, to “the Lessee” at such land or premises where the name of the lessee cannot be ascertained and to “the Occupier” at such land or premises where the name of the occupier cannot be ascertained;

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(10) Section 56G of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 13, paragraph 11(7).

- (b) the notification in accordance with paragraph (1) of a person holding a notifiable interest in neighbouring land in terms of paragraph (2)(b) shall be sent addressed in each case to “the Owner”, and “the Occupier” at each address of the premises contained or included in the neighbouring land.
- (4) An application for hazardous substances consent shall not be entertained by the planning authority unless it is accompanied by whichever of the certificates set out in Forms 4 to 7 is appropriate, stating—
  - (a) that notification has been carried out under paragraphs (1) to (3)
    - (i) in the case of lands and heritages entered in the valuation roll, detailing as appropriate—
      - (aa) the names and addresses of those persons having a notifiable interest in neighbouring land who have been notified under paragraphs (1), (2)(a) and (3)(a)(i), with details of their interest, namely that of an owner, lessee or occupier, as the case may be; and
      - (bb) the addresses of the premises in respect of which the owner of the lessee or the occupier has been notified in accordance with paragraphs (1), (2)(a) and 3(a)(ii), with details as to whether the notification was sent addressed to “the Owner”, to “the Lessee” or to “the Occupier”, or to any or all of them; and
    - (ii) in the case of lands and heritages not entered in the valuation roll, listing the addresses of the premises in respect of which the owners and occupiers have been notified in accordance with paragraphs (1), (2)(b) and (3)(b); or
  - (b) that no notification under paragraphs (1) to (3) is required; or
  - (c) that it is not possible to carry out notification because there are no premises on the neighbouring land to which the notification can be sent.

### **Publication of notices of applications**

7.—(1) Before making an application for hazardous substances consent to the planning authority, the applicant shall, during the 21 day period immediately preceding the application publish in a newspaper circulating in the locality in which the land to which the application relates is situated a notice of the application in the form set out in Form 8.

(2) The notice required by paragraph (1) shall invite representations on the application to be made to the planning authority within 21 days of the publication of the notice.

(3) An application for hazardous substances consent shall not be entertained by the planning authority unless it is accompanied by a copy of the notice referred to in paragraph (1), certified by, or on behalf of, the applicant as having been published in a newspaper in accordance with paragraph (1) and specifying the name of the newspaper and the date of its publication.

### **Notification of applications to owners**

8.—(1) An application for hazardous substances consent shall not be entertained by the planning authority unless it is accompanied by whichever of certificates A to D set out in Form 9 is appropriate, signed by or on behalf of the applicant.

(2) The required notice referred to in certificates B and C of Form 9 shall, in the case of an application for hazardous substances consent, be a notice given of Form 10 and shall invite any owner on whom the notice is served to make representations on the application to the planning authority within 21 days of service of the notice.

### **Inspection of applications**

**9.** The applicant shall make a copy of the application available for inspection at a place within the locality of the land to which the application relates during the period or periods allowed for making representations pursuant to regulations 6(1)(a)(iii), 7(2) and 8(2).

### **Procedure on receipt of applications by planning authority**

**10.—**(1) When the planning authority receive an application for hazardous substances consent or an application for any consent, agreement or approval required by a condition imposed on a grant of hazardous substances consent, they shall, as soon as practicable, sent to the applicant a written acknowledgement of receipt.

(2) Where, in the opinion of the planning authority, the application is invalid, the authority shall, as soon as practicable, notify the applicant of their opinion, giving their reasons.

(3) For the purposes of this regulation and regulations 11 and 12, the date on which the application for hazardous substances consent is received shall be taken to be the date on which the last of the following events occurred—

- (a) the application form has been received by the planning authority;
- (b) any certificates or documents required by regulations 6, 7 and 8 have been received by that authority; and
- (c) any fee required to be paid in respect of the application has been paid to that authority.

### **Consultation before the grant of hazardous substances consent**

**11.—**(1) Except where the consultee has notified the planning authority in writing that it does not wish to be consulted, the authority shall, before determining an application for hazardous substances consent, consult—

- (a) the Health and Safety Executive;
- (b) the Regional or District council concerned, where that council is not also the planning authority;
- (c) Scottish Natural Heritage<sup>(11)</sup>;
- (d) the community council concerned;
- (e) the fire and civil defence authority concerned, where that authority is not also the planning authority;
- (f) the river purification authority for the area concerned;
- (g) the public gas supplier concerned;
- (h) the electricity company concerned;
- (i) where the land to which the application relates is within 2 kilometres of a royal palace park or residence the Secretary of State;
- (j) where the land to which the application relates is in an area designated as a new town, the development corporation for the new town;
- (k) where the land to which the application relates is situated within 2000 metres of—
  - (i) an adjacent Region or District, the council for that Region or District;
  - (ii) the area of an adjacent fire authority and civil defence authority, that authority;
  - (iii) an adjacent new town, the development corporation for the new town;

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(11) See 1991 c. 28.

- (l) where it appears to the planning authority dealing with the application that land in the area of any other planning authority may be affected, that authority;
- (m) where the application relates to land in an area of coal working or former or proposed coal working notified to the planning authority by the British Coal Corporation, that Corporation;
- (n) where the application relates to land which is used for disposal or storage of controlled waste, the waste disposal authority concerned, where that authority is not also the planning authority.

(2) Where, under this regulation, a planning authority is required to consult in respect of an application, they shall, unless a copy of the application has been served on the consultee by the applicant, serve the consultee with a copy of the application within 7 days of its receipt by the authority.

(3) In this regulation—

“consultee” means any body listed in paragraph (1)(a)—(n);

“controlled waste” has the meaning given to that expression by section 75(4) of the Environmental Protection Act 1990<sup>(12)</sup>;

“river purification authority” means a river purification board established under section 135 as read with section 135A of the Local Government (Scotland) Act 1973<sup>(13)</sup> or an island council;

“waste disposal authority” means a district or island council exercising their functions as a disposal authority under Part I of the Control of Pollution Act 1974<sup>(14)</sup> or as a waste disposal authority under Part II of the Environmental Protection Act 1990.

### **Determination of applications for hazardous substances consent**

**12.**—(1) A planning authority shall not determine an application for hazardous substances consent before the expiry of—

- (a) the period or periods allowed for making representations pursuant to regulation 6(1)(a)(iii), 7(2) and 8(2); and
- (b) where the authority is required to consult under regulation 11, a period of 28 days beginning with the date on which the consultee is served with a copy of the application, or, where the authority is required to consult more than one consultee, beginning with the date by which all consultees have been so served.

(2) Subject to paragraph (1), the period within which a planning authority shall give notice to an applicant of their decision on an application for hazardous substances consent or referral of the application to the Secretary of State or regional planning authority, shall be two months, commencing on the date of receipt of the application or (except where the applicant has already given notice of appeal to the Secretary of State) such extended period as may be agreed upon in writing between the applicant and planning authority.

(3) When a planning authority give notice of a decision on an application for hazardous substances consent the notice shall be in writing and where hazardous substances consent is refused or is granted subject conditions—

- (a) state the reasons for that decision; and

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(12) 1990 c. 43.

(13) 1973 c. 65; section 135 was amended by the Control of Pollution Act 1974 (c. 40), Schedule 4 and the Water (Scotland) Act 1980 (c. 45), Schedule 9, paragraph 3; section 135A was inserted by the Natural Heritage (Scotland) Act 1991 (c. 28), Schedule 10, paragraph 6.

(14) 1974 c. 40.



- (b) include a statement to the effect that if the applicant is aggrieved by the decision he may appeal to the Secretary of State under section 33(15) within 6 months of the date of the notice of the decision.
- (4) The planning authority shall, as soon as is practicable, inform the following persons of the terms of their decision—
  - (a) the Health and Safety Executive;
  - (b) the Regional or District council, where that council is not the planning authority;
  - (c) every other consultee (as defined in regulation 11(3)) who has made representation to them on the application;
  - (d) every owner who has made representations to them on the application; and
  - (e) every person holding a notifiable interest in neighbouring land who has made representations to them on the application.

### **Notice of reference of applications to the Secretary of State or regional planning authority**

**13.** On referring any application to the Secretary of State under section 32(16) or to a regional planning authority under section 179 of the Local Government (Scotland) Act 1973(17), a planning authority shall serve on the applicant notice—

- (a) of the terms of the direction given in accordance with section 32;
- (b) of any reasons given by the Secretary of State or, as the case may be, such authority;
- (c) that the application has been referred to the Secretary of State or, as the case may be, such authority; and
- (d) in the case of an application referred to the Secretary of State, that the Secretary of State will, if the applicant so desires, afford to the applicant an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and that the decision of the Secretary of State on the application will be final.

### **Appeals**

**14.—**(1) An appeal to the Secretary of State under section 33 or 34 shall be made within 6 months of—

- (a) in the case of an appeal under section 33 (appeal against refusal of consent or against grant of consent subject to conditions) the date of the notice of the decision giving rise to the appeal; or
  - (b) in the case of an appeal under section 34 (failure to give decision)(18) the expiry of the period specified in regulation 12(2).
- (2) An appeal under section 33 or 34 shall—
- (a) be made to the Secretary of State by lodging with him a notice of appeal; and
  - (b) be accompanied by a copy of each of the documents specified in paragraph (3) and by the certificate required by paragraph (4).
- (3) The documents mentioned in paragraph (2)(b) are—

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(15) Section 33 of the Act has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act, which section was itself inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 16, Part VII.

(16) Section 32 of the Act has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act.

(17) Section 179 was substituted by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 3, paragraph 24 and amended by the 1986 Act, Schedule 11, paragraph 61; section 179 has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act.

(18) Section 34 of the Act has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act.

- (a) the application made to the planning authority which has occasioned the appeal;
- (b) any notices and certificates required by regulations 6, 7 and 8 which accompanied the application;
- (c) any correspondence with the authority relation to the application; and
- (d) the notice of decision, if any.

(4) An appeal under section 33 or 34 shall not be entertained by the Secretary of State unless it is accompanied by whichever of certificates A to D set out in Form 9 is appropriate, signed by or on behalf of the appellant.

(5) The required notice referred to in certificates B and C of Form 9 shall, in the case of and appeal under section 33 or 34, be a notice given on Form 11.

(6) The appellant shall send a copy of the completed notice of appeal form and accompanying documents and certificate to the planning authority at the same time as the appeal is made to the Secretary of State.

## PART 4

### DEEMED CONSENT

#### **Claim for deemed consent**

**15.—**(1) A claim for deemed consent under section 38 of the 1986 Act shall—

- (a) be made to the planning authority on Form 12;
- (b) include the information specified in the form, a site map and, where applicable, a moveable container storage area plan and a vessel location plan for each hazardous substance included in the claim; and
- (c) be accompanied by 3 copies of the form and of the map and any plan submitted with it.

(2) The site map required by paragraph (1)(b) shall be a map reproduced from, or based upon, and Ordnance Survey map with a scale of not less than 1 to 100,000 which identifies the land to which the claim relates and shows National Grid lines and reference numbers.

(3) The moveable container storage area plan required by paragraph (1)(b) shall be a plan of the land to which the claim relates, drawn to a scale of not less than 1 to 2,500, which identifies any area of the site where the hazardous substance has been stored in moveable containers at any time during the establishment period.

(4) The vessel location plan required by paragraph (1) (b) shall be a plan of the land to which the claim relates, drawn to a scale of not less than 1 to 2,500 which identifies any area of the site where the hazardous substance has been present in a vessel at any time during the establishment period; provided that;

- (a) not point on the boundary of the area so identified shall be more than 75 metres away from—
  - (i) a building which is or was within the area and which at any time during the establishment period contained a vessel in which the substance was present;
  - (ii) plant and machinery (other than pipe work) which is or was affixed to land within the area and which, at any time during the establishment period whilst it was so affixed, was used for an industrial process involving the substance; or
  - (iii) a vessel which is or was located outside a building and within the area and in which, at any time during the establishment period whilst it was so located, the substance was present;

- (b) no area identified in accordance with this paragraph shall overlap with any other area so identified in respect of the same substance.

### **Conditions on deemed consent**

**16.** The conditions set out in Schedule 3 are the prescribed conditions for the purposes of section 38(9)(b) of the 1986 Act<sup>(19)</sup>.

### **Interpretation of deemed consent provisions**

**17.—(1)** For the purpose of paragraph (3) of regulation 15 and the condition set out in paragraph 7(1) of Schedule 3, no account shall be taken of the storage of a hazardous substance in moveable containers in an area, if the quantity of the substance so stored in that area does not exceed 10% of the substance's controlled quantity.

(2) For the purpose of the 75 metre limit in paragraph (4)(a) of regulation 15, where a petroleum - spirit licence under the Petroleum (Consolidation) Act 1928<sup>(20)</sup> applying to the site was in force at any time during the establishment period, the reference to a vessel in which the hazardous substance was present shall, in relation to hazardous substance number 71 in column 1 of Schedule 1, include any vessel identified in the licence.

(3) For the purpose of paragraph (4) of regulation 15 and the conditions set out in paragraphs 1 to 6 of Schedule 3, and for the purpose of completing Table C in Form 12, no account shall be taken of the presence in a vessel of a hazardous substance if the quantity present in the vessel does not exceed 10% of the substance's controlled quantity.

(4) For the purpose of the conditions set out in paragraphs 1 to 5 of Schedule 3, and for the purpose of completing Table C in Form 12, a hazardous substance shall not be treated as being present in a vessel at other than ambient temperature by virtue only of—

- (a) the heating of the substance to maintain its fluidity during seasonal variations in temperature; or
- (b) any cooling effect resulting from the vaporisation of the substance during the withdrawal of vapour from the vessel; or
- (c) the presence of the substance at above or below ambient temperature on entry into the vessel, if the temperature of the substance is allowed to move to ambient temperature upon entry.

(5) For the purpose of the conditions set out in paragraphs 1 to 5 of Schedule 3, and for the purpose of completing Table C in Form 12, a hazardous substance shall not be treated as being present at above atmospheric pressure unless the pressure at which it is present exceeds 1.5 bar absolute.

(6) For the purpose of the conditions set out in paragraphs 1 to 5 of Schedule 3, no account shall be taken of an increase in pressure during the operation of a pressure relief system.

(7) In Schedule 3 and Table C in Form 12, "vessel area" means an area identified in a vessel location plan in accordance with paragraph (4) of regulation 15.

(8) In Schedule 3, references to Table C refer to Table C as set out in Form 12 (in Schedule 2) and references to a column of Table C refer to the relevant column of Table C of the form on which the claim for deemed consent is made that applies to the relevant hazardous substance and vessel area.

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<sup>(19)</sup> Section 38(9)(b) was amended by the Environmental Protection Act 1990, Schedule 13, paragraph 12(3)(b).

<sup>(20)</sup> 1928 c. 32.

## PART 5

### ENFORCEMENT

#### **Hazardous substances contravention notices**

**18.**—(1) A hazardous substances contravention notice shall identify the land to which the notice relates, whether by reference to a plan or otherwise.

(2) The persons prescribed pursuant to section 97B(4)(b) (other persons on whom notice is to be served)(**21**) are all persons having an interest in the land to which the application relates who in the opinion of the authority issuing the notice are materially affected by the notice.

(3) Every copy of a hazardous substances contravention notice served pursuant to section 97B(4) shall be accompanied by a statement setting out—

- (a) the planning authority’s reasons for issuing the notice; and
- (b) the right of appeal to the Secretary of State against the notice, and the persons by whom, grounds upon which and time within which such an appeal may be brought under section 85(**22**).

#### **Appeals against hazardous substances contravention notices**

**19.**—(1) Section 85 (other than subsections (2B),(3),(5A) and (5B)) shall apply to appeals against hazardous substances contravention notices, subject to the modifications set out in Part 1 of Schedule 4.

(2) The provisions of section 85 which apply to such appeals, as modified in accordance with paragraph (1), are set out in Part 5 of Schedule 4.

#### **Appeals: supplementary**

**20.**—(1) A person who appeals against a hazardous substances contravention notice shall, at the same time as notice of the appeal is given to the Secretary of State under section 85(2), send to the planning authority a copy of the notice of appeal and accompanying material required by section 85(2A).

(2) The planning authority shall, within 28 days of receiving the notice of appeal, give to the Secretary of State and to the appellant a statement—

- (a) setting out their submissions in relation to each ground of appeal; and
- (b) indicating whether they would be prepared to grant hazardous substances consent for the presence on, over or under the land of any quantity of the hazardous substance to which the hazardous substances contravention notice relates and, if so, particulars of the condition, if any, which they would wish to impose on such consent.

(3) The planning authority shall, within that 28 day period, give notice of the appeal to persons holding a notifiable interest (as described in regulation 6(2)) in neighbouring land to that land to which the hazardous substances contravention notice relates.

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(21) Section 97B(4)(b) of the Act was inserted by section 36 of the 1986 Act.

(22) Section 85 was amended as follows: subsections (1) and (2) were substituted by the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”), section 38(1); subsections (2A)-(2D) were inserted by the Local Government and Planning Act 1982 (c. 43) (“the 1982 Act”), Schedule 2, paragraph 20(b) and subsection (2B) amended by the 1991 Act, Schedule 13, paragraph 20(a); subsection (4) was amended by the 1991 Act, Schedule 13, paragraph 20(b); subsection (5) was amended by the 1991 Act, Schedule 13, paragraph 20(c); subsections (5A) and (5B) were inserted by the 1991 Act, Schedule 13, paragraph 20(d); subsection (6) was amended by and subsections (6A) and (6B) inserted by the 1991 Act, Schedule 13, paragraph 20(e); subsection (7) was amended by the Local Government (Scotland) Act 1973 (c. 65), section 172(2) and by the 1991 Act, Schedule 13, paragraph 20(f); subsection (7A) was inserted by the 1991 Act, section 38(2); subsection (8) was repealed by the 1986 Act, Schedule 12, Part IV; subsection (11) was repealed by the 1991 Act, Schedule 13, paragraph 20(g).

### Effect of hazardous substances contravention notices, etc

**21.**—(1) Sections 86 (other than subsections (4) and (5))(23), 88(24), 89(25) and 89A (other than subsection (2))(26) shall have effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 2 of Schedule 4.

(2) The provisions of sections 86, 88, 89 and 89A which apply to such notices, as modified in accordance with paragraph (1), are set out in Part 5 of Schedule 4.

### Enforcement register

**22.**—(1) Section 87A(27) (register of enforcement and stop notices) shall have effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 3 of Schedule 4.

(2) The provisions of section 87A, as modified in accordance with paragraph (1), are set out in Part 5 of Schedule 4.

### Validity

**23.** Section 231(28) (as read with section 233(3))(29) shall apply to appeals against hazardous substances contravention notices, subject to the modifications set out in Part 4 of Schedule 4.

## PART 6

### CONSENTS REGISTER

#### Consents register

**24.**—(1) The register which every planning authority is required to keep under section 56N(1)(30) shall be in 6 parts as follows—

- (a) Part 1 shall contain a copy of every application for hazardous substances consent submitted to the planning authority and not finally determined;
- (b) Part 2 shall contain in respect of every application for hazardous substances consent made to the planning authority—
  - (i) particulars of the application including the name and address of the applicant, the date of the application, brief particulars of the presence of a hazardous substance which requires the consent;

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(23) Section 86 was substituted by the Planning and Compensation Act 1991, section 40.

(24) Section 88(1) was amended by the Local Government (Scotland) Act 1973 (“the 1973 Act”), section 172(2) and by the Planning and Compensation Act 1991 (“the 1991 Act”), Schedule 19, Part IV; subsection (1A) was inserted by the Local Government and Planning (Scotland) Act 1982 (“the 1982 Act”), Schedule 2, paragraph 23(a); subsection (2) was amended by the 1973 Act, section 172(2) and by the 1991 Act, Schedule 13, paragraph 23; subsections (3)-(5) were substituted by the 1982 Act, Schedule 2, paragraph 23(b); subsection (6) was inserted by the 1991 Act, section 39.

(25) Section 89(1), (3) and (4) was amended by the Planning and Compensation Act 1991, Schedule 13, paragraph 24; section 89(4) was also amended by virtue of the Criminal Procedure (Scotland) Act 1975 (c. 21) section 289G (as inserted by the Criminal Justice Act 1982 (c. 48) section 54).

(26) Section 89A was replaced (after earlier insertion) by the Planning and Compensation Act 1991, Schedule 13, paragraph 25.

(27) Section 87A was inserted by the Local Government and Planning (Scotland) Act 1982, sections 44 and 69(2) and amended by the Planning and Compensation Act 1991, Schedule 13, paragraph 22.

(28) Section 231 was amended as follows: by the Town and Country Planning (Minerals) Act 1981 (c. 36), Schedule 2, paragraph 8; by the Local Government and Planning (Scotland) Act 1982 (c. 43), sections 47(c) and 69(2), Schedule 2, paragraph 35(a) and (b) and Schedule 4, Part I; by the 1986 Act, Schedule 6, Part IV, paragraph 4, Schedule 7, Part II, paragraph 2, and Schedule 11, paragraph 50; and by the Planning and Compensation Act 1991, Schedule 13, paragraph 33 and Schedule 12, paragraph 22.

(29) Section 233(3) was amended by the 1986 Act, Schedule 12, Part IV.

(30) Section 56N of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 13, paragraph 11(9) and Schedule 16, Part VII.

- (ii) particulars of any direction given under section 32 of the Act as applied by section 56F;
  - (iii) the date and effect of the decision, if any, of the planning authority in respect of the application;
  - (iv) the date and the effect of any decision of the Secretary of State in respect of the application on appeal or on a reference under section 32;
  - (v) the Secretary of State's decision in respect of a deemed application for hazardous substances consent on an appeal to him under section 85 against a hazardous substances contravention notice and the date and effect of the Secretary of State's decision;
- (c) Part 3 shall contain a copy of every order revoking or modifying hazardous substances consent made by the planning authority and the date and effect of and confirmation by the Secretary of State in accordance with section 56J(5)(31);
  - (d) Part 4 shall contain, in respect of every hazardous substances consent deemed to be granted under section 38(5), a copy of the relevant claim form;
  - (e) Part 5 shall contain a copy of every hazardous substances consent deemed to be granted by virtue of a direction given by a Government Department under section 56G;
  - (f) Part 6 shall contain a copy of any direction under section 56M(32) sent to the authority by the Secretary of State.
- (2) The register shall include an index to enable any person to trace an entry in the register.
  - (3) Every entry in the register shall be made within 14 days of the relevant information being available to the planning authority.
  - (4) The register for their area shall be kept at the office of every planning authority.

## PART 7

### MISCELLANEOUS

#### **Fees for applications**

**25.**—(1) Subject to paragraph (3), the fee which shall be payable to a planning authority with an application for hazardous substances consent shall be as follows—

- (a) if section 56H applies (new consent without previous conditions), £200;
- (b) if section 56H(1) does not apply and the quantity specified in the application as the maximum quantity proposed to be present exceeds twice the controlled quantity £400;
- (c) in any other case, £250;

(2) Subject to paragraph (3), a fee shall be payable to a planning authority on an application for the continuation of hazardous substances consent under section 56K(2) of £200.

(3) Where applications relating to the same site are made to 2 or more planning authorities, a fee shall be payable only to the authority in whose area the largest part of the site is situated and the amount payable shall be the amount that would have been payable if application had fallen to be made to one authority in relation to the whole site.

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(31) Section 56J of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 16, Part VII.

(32) Section 56M of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 16, Part VII.

(4) Any fee due in respect of an application shall accompany the application when it is made to the planning authority.

(5) Any fee paid pursuant to this regulation shall be refunded if the application is rejected as invalidly made.

### **Fees for deemed applications**

**26.**—(1) Subject to paragraph (4), a fee shall be paid to the Secretary of State in every case where an application for hazardous substances consent is deemed to have been made by virtue of section 85(7) (in consequence of an appeal against a hazardous substances contravention notice) by every person who has made a valid appeal against the relevant hazardous substances contravention notice.

(2) Subject to paragraph (6), the fee payable shall be the amount which would be payable under regulation 25 if the application were an application to which that regulation applied.

(3) The fee due shall accompany the written notice of the relevant appeal to the Secretary of State.

(4) This regulation shall not apply where the appellant had—

- (a) before the date on which the hazardous substances contravention notice was issued, applied to the planning authority for hazardous substances consent for the presence of the quantity of the substance to which the notice relates, and had paid the fee payable in respect of that application; or
- (b) before the date specified in the notice as the date on which it is to take effect, made an appeal to the Secretary of State under section 33,

and at the date on which the relevant notice was issued that application or, in the case of an appeal made before the date on which the enforcement notice is to take effect, that appeal had not been determined.

(5) Any fee paid in respect of the deemed application shall be refunded to the appellant if—

- (a) the Secretary of State declines jurisdiction on the relevant appeal on the grounds that it does not comply with one or more of the requirements of subsections (1) and (2) of section 85;
- (b) where the Secretary of State under section 85(2C)—
  - (i) dismisses the appeal on the grounds that the appellant has failed to comply with subsection (2A) within the time prescribed under subsection (2B)(a) of that section; or
  - (ii) allows the appeal and quashes the enforcement notice on the grounds that the planning authority failed to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of subsection (2B) of that section;
- (c) the relevant appeal is withdrawn with the result that there are at least 21 days between the date on which notice in writing of the withdrawal is received by the Secretary of State and—
  - (i) the date or, in the event of postponement, the latest date appointed for the holding of an inquiry or hearing into that appeal; or
  - (ii) in the case of an appeal which is being dealt with by way of written submissions the date or, in the event of postponement, the latest date appointed for the inspection of the site to which the notice relates;
- (d) where the planning authority withdraws the relevant enforcement notice before it takes effect or if the Secretary of State considers that there was no subject matter to appeal against since the purported enforcement notice had no legal effect; of

(e) the Secretary of State allows the relevant appeal on any of the grounds set out in section 85(1)(b) to (e).

(6) Where a hazardous substances contravention notice is varied under section 85(5) otherwise than to take account of a grant of hazardous substances consent under that section, and the fee calculated in accordance with paragraph (2) would have a lesser amount if the original notice had been in the terms of the varied notice, the fee payable shall be that lesser amount and any excess amount already paid shall be refunded.

(7) In determining a fee under paragraph (6) no account shall be taken of any change in fees which takes effect after the making of the deemed application.

### **Applications by a planning authority**

**27.**—(1) Any application by a planning authority for hazardous substances consent shall be made to the Secretary of State.

(2) Regulations 5 to 9 shall apply to the making of such applications as they apply to applications made to a planning authority.

(3) For the purpose of regulation 24, an application made to the Secretary of State by a planning authority shall be treated as an application made to the planning authority and referred to the Secretary of State under section 32, as applied by section 56F(**33**).

(4) Section 56E (other than subsection(2)(e))(**34**) shall apply in relation to an application made to the Secretary of State by a planning authority as it applies in relation to an application made to a planning authority.

(5) For the purpose of section 233(**35**), a decision of the Secretary of State on an application made to him by a planning authority shall be treated as a decision under section 32 as applied by section 56F.

St. Andrew's House,  
Edinburgh  
18th February 1993

*Allan Stewart*  
Parliamentary Under Secretary of State, Scottish  
Office

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(33) Section 56F of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 16, Part VII.

(34) Section 56E of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 13, paragraph 11(6) and Schedule 16, Part VII.

(35) Section 233 was amended by the 1986 Act, Schedule 12, Part IV.